

108TH CONGRESS  
1ST SESSION

# H. R. 1178

To amend the Internal Revenue Code of 1986 to allow a credit against income tax for medical malpractice liability insurance premiums, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 2003

Ms. GINNY BROWN-WAITE of Florida introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Internal Revenue Code of 1986 to allow a credit against income tax for medical malpractice liability insurance premiums, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Physician Relief Act  
5 of 2003”.

### 6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds the following:

1           (1) Medical liability insurance premiums are  
2           soaring to the highest rates since the mid-1980s.

3           (2) The average increase for 2001 was approxi-  
4           mately 15 percent, and it is predicted that rates  
5           could rise as much as 50 percent this year for some  
6           specialties in some regions.

7           (3) Some of the largest insurers are raising  
8           rates more than 30 percent in many States.

9           (4) In 1999, jury awards in claims cases  
10          jumped 7 percent compared to the previous year. In  
11          addition, according to Jury Verdict Research, it cost  
12          30 percent more to settle a suit than it did just a  
13          year before in 1998.

14          (5) About 45 percent of the jury awards in  
15          1998–99 were for that amount or more, up from 39  
16          percent during the preceding 12 months.

17          (6) Physicians in West Virginia, New York,  
18          Pennsylvania, Mississippi, Florida, and other south-  
19          eastern States are already in crisis. In New York  
20          and Florida, obstetricians, gynecologists, and sur-  
21          geons routinely pay more than \$100,000 a year for  
22          \$1,000,000 coverage. Some are paying more than  
23          \$200,000.

24          (b) PURPOSE.—It is the purpose of this Act to imple-  
25          ment health care liability reforms designed to—

1           (1) protect access of all Americans to good  
2       health care and competent physicians; and

3           (2) relieve the undue burden on physicians that  
4       is created by excessive medical malpractice claims  
5       and judgments.

6 **SEC. 3. PUNITIVE DAMAGES.**

7       (a) IN GENERAL.—Punitive damages may, if other-  
8       wise permitted by applicable State or Federal law, be  
9       awarded against any person in a health care lawsuit only  
10      if it is proven by clear and convincing evidence that such  
11      person acted with malicious intent to injure the claimant,  
12      or that such person deliberately failed to avoid unneces-  
13      sary injury that such person knew the claimant was sub-  
14      stantially certain to suffer. In any health care lawsuit  
15      where no judgment for compensatory damages is rendered  
16      against such person, no punitive damages may be awarded  
17      with respect to the claim in such lawsuit. No demand for  
18      punitive damages shall be included in a health care lawsuit  
19      as initially filed. A court may allow a claimant to file an  
20      amended pleading for punitive damages only upon a mo-  
21      tion by the claimant and after a finding by the court, upon  
22      review of supporting and opposing affidavits, or after a  
23      hearing, after weighing the evidence, that the claimant has  
24      established by a substantial probability that the claimant  
25      will prevail on the claim for punitive damages. At the re-

1 quest of any party in a health care lawsuit, the trier of  
2 fact shall consider in a separate proceeding—

3 (1) whether punitive damages are to be award-  
4 ed and the amount of such award; and

5 (2) the amount of punitive damages following a  
6 determination of punitive liability.

7 If a separate proceeding is requested, evidence relevant  
8 only to the claim for punitive damages, as determined by  
9 applicable State law, shall be inadmissible in any pro-  
10 ceeding to determine whether compensatory damages are  
11 to be awarded.

12 (b) DETERMINING AMOUNT OF PUNITIVE DAM-  
13 AGES.—

14 (1) FACTORS CONSIDERED.—In determining  
15 the amount of punitive damages, the trier of fact  
16 shall consider only the following:

17 (A) The severity of the harm caused by the  
18 conduct of such party.

19 (B) The duration of the conduct or any  
20 concealment of it by such party.

21 (C) The profitability of the conduct to such  
22 party.

23 (D) The number of products sold or med-  
24 ical procedures rendered for compensation, as  
25 the case may be, by such party, of the kind

1 causing the harm complained of by the claim-  
2 ant.

3 (E) Any criminal penalties imposed on  
4 such party, as a result of the conduct com-  
5 plained of by the claimant.

6 (F) The amount of any civil fines assessed  
7 against such party as a result of the conduct  
8 complained of by the claimant.

9 (2) MAXIMUM AWARD.—The amount of punitive  
10 damages awarded in a health care lawsuit may be up  
11 to as much as two times the amount of economic  
12 damages awarded or \$250,000, whichever is greater.  
13 The jury shall not be informed of this limitation.

14 **SEC. 4. TAX CREDIT FOR MEDICAL MALPRACTICE LIABIL-**  
15 **ITY INSURANCE PREMIUMS.**

16 (a) IN GENERAL.—Subpart D of part IV of sub-  
17 chapter A of chapter 1 of the Internal Revenue Code of  
18 1986 (relating to business related credits) is amended by  
19 adding at the end the following new section:

20 **“SEC. 45G. MEDICAL MALPRACTICE LIABILITY INSURANCE**  
21 **PREMIUMS.**

22 “(a) IN GENERAL.—For purposes of section 38, the  
23 medical malpractice liability insurance premium credit de-  
24 termined under this section is the amount paid or incurred  
25 during the taxable year for medical malpractice liability

1 insurance coverage for the medical malpractice liability of  
 2 a physician who is the taxpayer or any employee of the  
 3 taxpayer.

4 “(b) LIMITATION.—The credit allowed by subsection  
 5 (a) for any taxable year shall not exceed \$2,000 with re-  
 6 spect to each covered physician.”

7 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-  
 8 tion 38(b) of such Code is amended by striking “plus”  
 9 at the end of paragraph (14), by striking the period at  
 10 the end of paragraph (15) and inserting “, plus”, and by  
 11 adding at the end the following new paragraph:

12 “(16) the medical malpractice liability insur-  
 13 ance premium credit determined under section  
 14 45G(a).”.

15 (c) NO CARRYBACKS.—Subsection (d) of section 39  
 16 of such Code (relating to carryback and carryforward of  
 17 unused credits) is amended by adding at the end the fol-  
 18 lowing:

19 “(11) NO CARRYBACK OF SECTION 45G CREDIT  
 20 BEFORE EFFECTIVE DATE.—No portion of the un-  
 21 used business credit for any taxable year which is  
 22 attributable to the medical malpractice liability in-  
 23 surance premium credit determined under section  
 24 45G may be carried back to a taxable year ending  
 25 before the date of the enactment of section 45G.”.

1 (d) DENIAL OF DOUBLE BENEFIT.—Section 280C of  
 2 such Code (relating to certain expenses for which credits  
 3 are allowable) is amended by adding at the end the fol-  
 4 lowing new subsection:

5 “(d) CREDIT FOR MEDICAL MALPRACTICE LIABILITY  
 6 INSURANCE PREMIUMS.—

7 “(1) IN GENERAL.—No deduction shall be al-  
 8 lowed for that portion of the medical malpractice li-  
 9 ability insurance premiums otherwise allowable as a  
 10 deduction for the taxable year which is equal to the  
 11 amount of the credit allowable for the taxable year  
 12 under section 45G (determined without regard to  
 13 section 38(c)).

14 “(2) CONTROLLED GROUPS.—In the case of a  
 15 corporation which is a member of a controlled group  
 16 of corporations (within the meaning of section  
 17 41(f)(5)) or a trade or business which is treated as  
 18 being under common control with other trades or  
 19 business (within the meaning of section  
 20 41(f)(1)(B)), this subsection shall be applied under  
 21 rules prescribed by the Secretary similar to the rules  
 22 applicable under subparagraphs (A) and (B) of sec-  
 23 tion 41(f)(1).”.

24 (e) CONFORMING AMENDMENT.—The table of sec-  
 25 tions for subpart D of part IV of subchapter A of chapter

1 1 of such Code is amended by adding at the end the fol-  
2 lowing new item:

“Sec. 45G. Medical malpractice liability insurance premiums.”.

3 (f) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to amounts paid or incurred after  
5 the date of the enactment of this Act in taxable years end-  
6 ing after such date.

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